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09/710,516	11/10/2000	Gerald R. Koefeldt	RPC-0485-PUS	5124
33171	7590	04/12/2005	EXAMINER CASTELLANO, STEPHEN J	
KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023			ART UNIT 3727	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/710,516
Filing Date: November 10, 2000
Appellant(s): KOEFELDA ET AL.

Konstantine J. Diamond
For Appellant

EXAMINER'S ANSWER

MAILED

'APR 12 2005

Group 3700

This is in response to the appeal brief filed February 9, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

Claims 18, 22, 27 and 28 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Patents:

5,975,300	Gale	11-1999
5,769,230	Koefeldt	6-1998
5,351,814	Apps	10-1994
5,335,814	Hepp	8-1994
2,928,530	Sauey	3-1960

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauey.

Sauey discloses a crate capable of holding a beverage container, the beverage container having a lower portion and a central label area, the crate comprising a unitary bottom panel, first and second pairs of opposing side walls and a divider assembly having longitudinal and transverse divider members (dividers) and a plurality of low profile standoff portions (standoffs), each of the standoffs having a container contact surface spaced from the corresponding dividers .

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldal.

Sauey discloses the invention except for the hinged lid. Koefeldal teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). It would have been obvious to provide the hinged lid with a lid capture area in order to properly align the items within the crate to keep the items covered, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

Claims 4, 6, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldal and Apps ('814)(Apps).

Sauey discloses the invention except for the hinged lid. Koefeldal teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). Apps teaches a lid with an outer surface with projections, the projections provide inside surface recesses for the upper portion of bottles stored therein and the projections are received in the crate bottom recesses of a identical crate stacked thereabove. It would have been obvious to provide the hinged lid with lid capture areas (recesses) and for the outer surfaces of the lid capture areas to form projections which are received in the recesses of a crate bottom stacked thereabove in order to properly align the items within the crate in to keep the items covered thereby reducing contamination and deterioration from light, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

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Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Sauey and Hepp.

Apps discloses the crate including the divider assembly having dividers (dividing walls 116, 216) and standoff portions (standoffs) (formed by support areas 122 with a raised circular rib, a longitudinal rib and a transverse rib). Apps discloses the invention except the standoffs being generally transverse to the upper surface of the bottom panel. Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

Claims 1-5, 7-15, 17, 19, 20, 23-26 and 29-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps, Sauey and Hepp.

Gale discloses a crate for holding a beverage container, the crate comprising a unitary bottom panel (minor flaps 21, 22 and inserts 81, 82) having an upper surface (the upper surfaces of both inserts), sidewalls (SIDE 1, SIDE 2, END 1 and END 2) and a divider assembly having a plurality of divider members (formed by portions of the upper surface of inserts 81 and 82 located outside of and extending between the major wells (91) and the upwardly extending sidewall portions of the wells) attached to the upper surface of the bottom panel and extending longitudinally and transversely in the compartment area to define at least one container receiving

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area for receiving the beverage container therein, the divider assembly including a plurality of low profile standoff portions (cylindrical rib 96) having a container contact surface (inside surface, outside surface or upper edge surface) spaced from corresponding divider members, the standoff portions extending inwardly into the at least one container receiving area for engaging the lower portion of the container to provide stability thereto and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

The minor flaps 21 and 22 are secured to the inserts 81 and 82, respectively (see column 4, lines 24 and 25) and the minor flaps 21 and 22 are indirectly secured to each other by being attached to the sidewalls by fold lines 46, 47 (see column 3, lines 43-46). The bottom panel is unitary. The bottom panel and the first and second pairs of side walls form a unitary construction.

Gale discloses the invention except for the bottom panel, sidewalls and divider assembly being integrally molded as one piece. Apps, Sauvey and Hepp disclose integrally molded as one piece structures including the bottom panel, sidewalls and divider assembly. It would have been obvious to modify the construction to be integrally molded as one piece in order to save manufacturing costs associated with the assembly of separate parts and to eliminate the misplacement of parts.

Re claims 5 and 15, the insert 81 has recesses (opposite rib 98, see Fig. 7), each recess is capable of receiving a projection.

Re claim 10, the container receiving area can be more than a single bottle receiving area and can include four bottle receiving areas, so four standoffs extend within at least one container receiving area.

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Re claim 24, Gale doesn't disclose a lid projection and receiving area. Apps teaches a lid projection and receiving area. It would have been obvious to add the lid projection and receiving area to provide stability to a vertically stacked array of crates to prevent toppling of the stack.

Claims 20 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Gale, Koefeldt, Sauey and Hepp.

Apps discloses the invention except for the hinged lid. Gale and Koefeldt teach hinged lids. It would have been obvious to add a hinge to the lid to keep the lid attached so that it doesn't become separated from the crate and to provide an alignment feature for the recesses on the underside of the lid to keep the items stored within the crate properly aligned to prevent damage from rubbing or damage to the top of the item stored.

In addition, Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over [Apps in view of Gale, Sauey and Hepp] or [Gale in view of Apps, Sauey and Hepp] as applied to claim 20 above, and further in view of Jamison.

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The combinations discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

(10) Response to Argument

102 Rejection

Appellant argues that Sauey extends over a considerable length of the object (shotgun shell) being stored within the crate while the present invention is made to avoid contact. The term “considerable” as used by Sauey doesn’t mean entire length. When Fig. 3 of Sauey is viewed, the protuberances 32 are approximately 60 % of the height of the dividers and substantially less (less than 50%) of the height of the crate. Therefore, Sauey meets the “low profile” limitation as claimed and as applied to the height of the standoff portions.

Insofar as the term “low profile” is used to define the standoff portions, the term “low profile” applies to height as well as transverse width. The transverse width of the protuberances 32 of Sauey have a smaller dimension and meet the “low profile” limitation.

103 Rejection - Sauey in view of Koefeld

Appellant states that the modification of Sauey to have a lid capture area is unnecessary because the divider walls and protuberances 32 completely separate the shells from each other. This is not persuasive since Fig. 3 of Sauey shows a space having significant height extending above the dividers and the divided spaces are all deemed to open at the top and connect with this

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space. The compartments are not completely separate. Even if the compartments were completely separate, this is no deterrent to providing securement that extends from the lid to further ensure against movement of the shell when the crate is being transported.

103 Rejection - Sauey in view of Koefeld and Apps

Appellant further argues that there is no motivation to combine a hinged lid. The stated motivation is to align the items in the crate since the hinge allows the lid to have one position when closed since the hinge restricts movement. In other areas of the action, motivation to prevent the misplacement or loss of a lid is discussed which further motivates this combination.

103 Rejection - Apps in view of Sauey and Hepp

Appellant argues that there is no motivation to modify Apps. The motivation would be to more effectively secure the container so that the containers are further spaced and prevented from touching each other. This would prevent breakage or damage due to glass bottles contacting each other during rough handling or transport.

103 Rejection – Gale in view of Apps, Sauey and Hepp

Appellant argues that Gale doesn't maintain the beverage container in a spaced relationship from the dividers. Claim 1 states "for maintaining the corresponding beverage container in a spaced relationship from the divider members." The language is "intended use" language since the phrase is preceded by the word "for." Gale only needs to be capable of maintaining a beverage container spaced from the divider. Gale would be capable of

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maintaining a thinner beverage container which has a bottom indentation that engages the circular rib 96 in a spaced relationship from the divider.

Sauey and Hepp have structure to space the container or shell from the divider.

103 Rejection – Apps in view of Gale, Koefeld, Sauey and Hepp

Appellant states that Apps doesn't disclose spacer members. The spacer members are separator rings 150.


Sauey and Hepp have structure to space the container or shell from the divider.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Stephen Castellano

Conferees:

njn 
lwy 